



NEVADA COMMISSION ON ETHICS EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION REGARDING JUST AND SUFFICIENT CAUSE

REQUEST FOR OPINION NO.
07-31C

SUBJECT: JAMES P. ITHURRALDE, MEMBER
EUREKA COUNTY RECREATION BOARD

James P. Ithurralde is claimed to have used his position in the Eureka County Recreation Board ("Board") to grant public funds to the local post of the Veterans of Foreign Wars ("VFW") to purchase display banners honoring current military service members. He allegedly violated:

- NRS 281A.400.2 by using his position to benefit the VFW of which he is a member.
- NRS 281A.420.2 by failing to abstain from voting on the matter due to his conflict of interest.
- NRS 281A.420.4 by failing to disclose that he is a member of the VFW prior to his voting to grant the funding.

A. JURISDICTION:

In his capacity as a member of the Eureka County Recreation Board ("Board"), James P. Ithurralde is a public officer as defined by NRS 281A.160. As such, the Nevada Commission on Ethics has jurisdiction over this complaint.

B. RELEVANT STATUTES:

NRS 281A.160 "Public officer" defined.

1. "Public officer" means a person elected . . . to a position which is established by . . . a statute of this State . . . which involves the exercise of a public power, trust or duty. As used in this section, "the exercise of a public power, trust or duty" means:

- (b) The expenditure of public money.

NRS 281A.400 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

2. A public officer . . . shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself . . . or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

RELEVANT STATUTES (CONTINUED)

(a) “Commitment in a private capacity to the interests of that person” has the meaning ascribed to “commitment in a private capacity to the interests of others” in NRS 281A.420.8¹.

(b) “Unwarranted” means without justification or adequate reason.

NRS 281A.420 Additional standards: Voting by public officers; disclosures required of public officers . . . ; effect of abstention from voting on quorum; Legislators authorized to file written disclosure.

1. Except as otherwise provided in subsection 2, 3 or 4, a public officer may vote upon a matter if the benefit or detriment accruing to him as a result of the decision either individually or in a representative capacity as a member of a general business, profession, occupation or group is not greater than that accruing to any other member of the general business, profession, occupation or group.

2. Except as otherwise provided in subsection 3, in addition to the requirements of the code of ethical standards, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

(c) His commitment in a private capacity to the interests of others.²

➔ It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit . . . accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

4. A public officer . . . shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

(b) Which would reasonably be affected by his commitment in a private capacity to the interest of others . . .

➔ without disclosing sufficient information concerning . . . the interest to inform the public of the potential effect of the action or abstention upon the person . . . to whom he has a commitment, or upon his interest. . . . [S]uch a disclosure must be made at the time the matter is considered.

^{1, 2} **NRS 281A.420.8:** As used in this section, “commitment in a private capacity to the interests of others” means a commitment to a person:

- (a) Who is a member of his household;
- (b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;
- (c) Who employs him or a member of his household;
- (d) With whom he has a substantial and continuing business relationship; or
- (e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

C. RECOMMENDATIONS:

Sufficient credible evidence does exist to support a finding that Mr. Ithurrealde violated the provisions of NRS 281A.420.4. He was required to disclose his membership in the VFW at the April 26, 2007 meeting of the Eureka County Recreation Board before he voted to spend money on the banners. It is recommended that the Panel find that just and sufficient cause **DOES EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of NRS 281A.420.4.

Sufficient credible evidence does not exist to support a finding that Mr. Ithurrealde violated the provisions of NRS 281A.400.2 and NRS 281A.420.2. It is recommended that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of NRS 281A.400.2 and NRS 281A.420.2. He did not benefit himself or the VFW, nor was he required to abstain from voting.

D. SUMMARY OF REQUEST FOR OPINION (COMPLAINT):

On June 18, 2007, a Request for Opinion (complaint) was received from Lisa J. Wolf. The following is the substance of the allegations:

On April 26, 2007, Mr. Ithurrealde, the Eureka County Commission member of the recreation board, voted to grant \$1,462 to the VFW. He failed to disclose that he is a member of the VFW and should have abstained from voting due to his conflict of interest.

E. SUMMARY OF SUBJECT'S RESPONSE:

Mr. Ithurrealde submitted a *Waiver of Statutory Time Requirement* form on July 26, 2007.

On August 13, 2007, Mr. Ithurrealde submitted the Subject's Response to the complaint. The following is a summary of his response submitted by his attorney:

The Commission on Ethics does not have jurisdiction to render an opinion in this matter because the Board's function is that of an advisory board.. The Board was established simply by appointment of its five members by the Board of Eureka County Commissioners. The Board was never created through local ordinance or established by resolution as required by NRS 244A.599, and its powers and duties were never enumerated as established by NRS 244A.597 to 244A.655.

Mr. Ithurrealde is not a public officer as defined by NRS 281.005 and NRS 281A.160. A public officer does not include members of advisory boards or commissions. The powers and duties of the Board have never been enumerated by resolution or ordinance simply because the Board was never established pursuant to state or local law. Historically, the Board has limited its actions to granting funds to organizations for activities and improvements within the county that are designed to increase visitors and benefit local business. Whenever the Board decides to grant funds to an organization, it will prepare a voucher for payment that must then be reviewed and approved by the Eureka Board of County Commissioners. The function of the Board is nothing more than that of an advisory board. A member of an advisory board is not a public officer for purposes of chapter 281A.

SUMMARY OF SUBJECT'S RESPONSE (CONTINUED)

Mr. Ithurrealde did not violate NRS 281A.400.2 by voting in his capacity as member of the Board to approve funding for the purchase of banners by the VFW of which Mr. Ithurrealde is a member. Mr. Ithurrealde received no unwarranted privilege, preference, exemption or advantage for himself through his approval of funding to the VFW for the purchase of the banners. The VFW simply requested that the Board take action in a manner routinely followed by the Board. The approved funds were sent directly to Dekra-Lite for the production of the banners. Eureka County personnel or volunteer firefighters will provide any future repair, maintenance, storage or removal of the banners. The banners make no reference to the VFW. The banners are intended to recognize local servicemen and women. The approval to fund the banners did not provide any advantage to the VFW. Mr. Ithurrealde has no business relationship with the VFW in which he has a pecuniary interest, as the VFW is a non-profit organization, and any service provided by Mr. Ithurrealde with respect to the organization is voluntary and uncompensated.

There is no commitment or interest that would raise the specter of an unwarranted privilege or require abstention at the meeting of Board on April 26, 2007. Mr. Ithurrealde has been a member of the VFW since 1974, and receives no compensation for his membership and service to the VFW. At no time did the VFW conduct a meeting to request banners be purchased. Cindy Adams, who is not a VFW member but is a member of the Board, came up with the idea in March 2007 to put banners on Main Street to honor active military service members. The standard (unwritten) operating procedure of the Board is to require requests for funds to be sponsored by an organization, in order to ensure accountability of the public funds spent. Ms. Adams approached VFW members who are not on the Board to present the request.

There is no relationship between the military service members recognized on the banners and any of the VFW members who voted as members of the Board or the VFW member who presented the request to the Board. There is no relationship between Dekra-Lite, the California company that produced the banners, and any of the VFW members who voted on the Board or who presented the request.

Mr. Ithurrealde was not required to abstain from the April 26, 2007 vote. Mr. Ithurrealde has no personal, business or other relationship with the company that produced the banners. Mr. Ithurrealde received no personal benefit through his actions. Even though Mr. Ithurrealde is a member of the VFW, his status as a member would not in any way be affected by his approval or disapproval of funds for the banners.

The minutes of the meeting reflect the fact that Mr. Ithurrealde did not disclose his membership in the VFW. If the Commission concludes it has jurisdiction, Mr. Ithurrealde understands the correct course of action would have been to disclose his relationship to the VFW and the potential effect his decision would have on the VFW or on him as a member of the VFW.

F. INVESTIGATIVE ACTIVITIES:

The investigator:

- Reviewed Request for Opinion (complaint) including the following documents **(TAB B)**:
 - Eureka County Recreation Board meeting notice and agenda for April 26, 2007.
 - Transcript of the Eureka County Recreation Board meeting of April 26, 2007 submitted by Ms. Wolf.
- Reviewed the following documents **(TAB C)**:
 - Determination of lack of jurisdiction letter (due to insufficient evidence) to requester from Commission on Ethics staff.
 - Letter with additional evidence received July 12, 2007 from Ms. Wolf.
 - E-mail received July 16, 2007 from Ms. Wolf appealing the staff determination to a Commission Panel.
 - Transcript from the jurisdictional panel proceeding held on July 20, 2007.
 - Letter dated July 23, 2007 from Commission staff to Ms. Wolf regarding the acceptance of jurisdiction by the Panel.
- Reviewed Subject's Response received from Mr. Ithurrealde's attorney, Theodore Beutel, Eureka County District Attorney, including the following items **(TAB D)**:
 - Affidavits of Carlton Thomas, Mr. Ithurrealde, Cindy Adams and Theodore Beutel.
 - Notice, agenda, minutes and audio recording of the Eureka County Recreation Board meeting of April 26, 2007.
 - Vendor proposal from Dekra-Lite.
 - Vendor claim voucher, transaction history, and copy of check to Dekra-Lite.

The investigator independently researched the following:

- Information requested from Jackie Berg, Eureka County Clerk/Treasurer, including the following documents **(TAB E)**:
 - Listings of Recreation Board members as of March 23, 2006 and January 2007.
 - Print-out of various sections of NRS 244A.
 - Portion of the transcript of the May 7, 2007 meeting of the Board of Eureka County Commissioners.
- Verified content of the transcription submitted by Ms. Wolf with the audio recording of the Eureka County Recreation Board meeting of April 26, 2007.
- Telephone interview with Mike Rebaleati, Eureka County Recorder and Auditor, regarding the recreation board's expenditure for the banners.
- General information related to recreation in Eureka County from the county government website; selected sections of NRS 377A relating to taxes for certain special purposes; NRS 244A.597 through NRS 244A.655 relating to county fair and recreation boards **(TAB F)**.

G. CONCLUSION AND RECOMMENDATION:

The Nevada Commission on Ethics has jurisdiction over Mr. Ithurrealde, a public officer, because he is a member of the Eureka County Recreation Board. Recreation boards are established in state statutes, NRS 244A.

It is recommended that the panel find just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion regarding whether Mr. Ithurrealde violated the provisions of NRS 281A.400.2. His vote did not benefit himself or his member organization, the VFW.

It is recommended that the panel find just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion regarding whether Mr. Ithurrealde violated the provisions of NRS 281A.420.2 for his failure to abstain from voting at the April 26, 2007 meeting of the Eureka County Recreation Board.

It is recommended that the panel find that just and sufficient cause **DOES EXIST** for the Commission to hold a hearing and render an opinion regarding whether Mr. Ithurrealde violated the provisions of NRS 281A.420.4. He was required to disclose his membership in the VFW at the April 26, 2007 meeting of the Eureka County Recreation Board before he voted to spend money on the banners.

REPORT PREPARED BY:

Matt C. Di Orto

DATED: 11/13/07

MATT C. DI ORIO
SENIOR INVESTIGATOR

APPROVAL AND RECOMMENDATION BY:

Patricia D. Cafferata

DATED: November 13, 2007

PATRICIA D. CAFFERATA, ESQ.
EXECUTIVE DIRECTOR